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In Reply Refer to:

1800B3-SS

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In Re: Denny and Marge Hazen
Ministries, Inc.
Carrollton, Ohio
Facility ID No. 175256
File No. BNPED-20071019AAM

Application for Construction Permit

Petition to Deny

Dear Mr. Hazen and Counsel:

This letter refers to the captioned application (the "Application") of Denny and Marge Hazen Ministries, Inc. ("Hazen") for a construction permit for a new noncommercial educational ("NCE") station operating on Channel 215 (90.9 MHz) at Carrollton, Ohio. On January 14, 2008, Mount Union College ("MUC"), licensee of WRMU-FM, Alliance, Ohio, filed a Petition to Deny ("Petition") Hazen's Application.¹ For the reasons set forth below, we deny the Petition and grant the Application.

Background. On October 19, 2007, Hazen filed the Application during the Commission window for NCE FM frequencies.² On November 8, 2007, the staff dismissed Hazen's Application as inadvertently accepted for filing for violating Section 73.509 of the Commission's Rules (the "Rules") with respect to co-channel Class A licensee WCWS-FM, Wooster, Ohio.³ On December 10, 2007, Hazen

¹ On January 28, 2008, Hazen filed an Opposition to Petition to Deny ("Opposition").

² The filing window opened on Friday, October 12, 2007. *See Media Bureau Announces NCE FM New Station and Major Modification Application Filing Window for New and Certain Pending Proposals; Window to Open on October 12, 2007*, Public Notice, 22 FCC Rcd 2726 (MB 2007); *Media Bureau to Extend Window for NCE FM New Station and Major Change Applications; Window Will Close on October 22, 2007*, Public Notice, 22 FCC Rcd 18680(MB 2007).

³ *See Letter to Denny and Marge Hazen Ministries, Inc.*, Ref. 1800B3, (rel. Nov. 8, 2007).

filed an engineering amendment and a Petition for Reconsideration of its dismissed Application. The staff granted reconsideration and reinstated the Application, as amended, on December 11, 2007.⁴ MUC opposes grant of the Application, arguing that Hazen has failed to describe its educational objective and how it will further that objective, pursuant to Section 73.503 of the Rules.⁵ To support this assertion, MUC alleges that Hazen has not provided any sample program descriptions or any sample educational guidance.⁶ In addition, MUC argues that Hazen does not “presently have the proper authority under Ohio law to operate a radio broadcast station.”⁷ Specifically, MUC contends that in Hazen’s Articles of Incorporation, Hazen states that it was formed to “preach and teach” and makes no mention of operating a radio broadcast station.⁸

Discussion. Under Section 309(d)(1) of the Communications Act of 1934, as amended (the “Act”),⁹ any party in interest may file a petition to deny an application. In order to assess the merits of a petition to deny, a two-step analysis is required. First, the petition must make specific allegations of fact sufficient to demonstrate that the petitioner is a party in interest and that a grant of the application would be *prima facie* inconsistent with the public interest, convenience, and necessity.¹⁰ This threshold determination is made by evaluating the petition and the supporting affidavits. If the petition meets this threshold requirement, the Commission must then examine all of the material before it to determine whether there is a substantial and material question of fact calling for further inquiry and requiring resolution in a hearing.¹¹ If no such question is raised, the Commission will deny the petition and grant the application if it otherwise serves the public interest, convenience, and necessity.

Procedural Issue: Standing. Hazen argues in its Opposition that MUC is not a “party in interest” and should not to be accorded standing in this proceeding. Specifically, Hazen contends that as licensee of a station “in the region,” MUC fails to demonstrate how Hazen’s proposed ownership of an NCE station in Carrollton, Ohio, is in any way relevant to the operation of MUC’s station in Alliance, Ohio. Hazen adds that it attached an Engineering Exhibit to the Application demonstrating that there would be no overlap of the stations’ protected service contours.¹²

Under Section 309(d) of the Act, a party has standing to file a petition to deny if grant of an application would result in, or be reasonably likely to result in, some injury of a direct, tangible or substantial nature.¹³ The Commission also accords party-in-interest status to a petitioner who

⁴ See *Broadcast Actions*, Public Notice, Report No. 26633 (rel. Dec. 14, 2007).

⁵ 47 C.F.R. § 73.503.

⁶ Petition at 2.

⁷ See *id.*

⁸ *Id.*

⁹ 47 U.S.C. § 309(d)(1).

¹⁰ See *id.*; *Astroline Communications Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988).

¹¹ 47 U.S.C. § 309(d)(2).

¹² See Application at Exhibit 10, page 9.

¹³ See, e.g., *Telesis Corp.*, Memorandum Opinion and Order, 68 FCC2d 696 (1978).

demonstrates that he/she listens to or views the station regularly and that such listening or viewing is not the result of transient contacts with the station.¹⁴ MUC does not provide in any of its pleadings either an affidavit or declaration raising a specific injury that would be caused to it by grant of the Application or attempting to establish listener/residence status as a basis for standing.¹⁵ Therefore, we find that MUC lacks standing to file a petition to deny the Application. Nevertheless, we will consider MUC's Petition as an informal objection ("Objection") under Section 73.3587 of the Rules.¹⁶

Substantive Issues: In applying Section 73.503 of the Rules, the Commission has required that NCE applicants be: (a) a government or public educational agency, board or institution; (b) a private, nonprofit educational organization; or (c) a nonprofit entity with a demonstrated educational purpose.¹⁷ We require that an applicant described in (a) or (b) above have an educational program and demonstrate how its programming will be used for the advancement of that program. An applicant applying as (c) above must specifically show: (i) that it is, in fact, a nonprofit educational organization, (ii) that it has an educational objective, and (iii) how its programming will further that objective.¹⁸ The requirement that NCE licensees provide programming that advances an educational objective may be satisfied by a variety of programs, including, but not limited to, "instructional programs, programming selected by students, bible study, cultural programming, in-depth news coverage, and children's programs such as Sesame Street that entertain as they teach."¹⁹ We have also stated that "in order to qualify as an educational station, it is not necessary that the proposed programming be exclusively educational."²⁰

Regarding MUC's claim that Hazen purports to "teach and preach" without further guidance, the Commission has made it clear that an applicant organization such as a church or ministry may operate on channels reserved for NCE stations.²¹ Although in *Way of the Cross*, the Commission rejected an application of a religiously oriented entity seeking a license to operate on a reserved NCE television channel because it had failed to make the showing required of NCE applicants for full-service

¹⁴ See *Tabback Broadcasting Company*, Memorandum Opinion and Order, 15 FCC Rcd 11899, 11900 n.3 (2000); *Chet-5 Broadcasting, L.P.*, Memorandum Opinion and Order, 14 FCC Rcd 13041 (1999).

¹⁵ The Commission has accorded standing to "competitors" under *Sanders Brothers Radio Station*, 309 U.S. 470 (1940) in the NCE context when: (1) the applicant's proposed coverage area directly overlaps that of the petitioner; and (2) the listener-supported-program format proposed by the applicant is similar to that aired by the petitioner. See *Family Stations, Inc.*, Hearing Designation Order, MM Docket No. 86-354, 1986 WL 291041 ¶6 (MMB rel. Sep. 24, 1986). Neither factor is present here.

¹⁶ 47 C.F.R. § 73.3587.

¹⁷ 47 U.S.C. § 73.503(a). The same eligibility requirements were in effect on the effective date of Section 397(6) of the Act. See also Appendix A to *Eligibility for Noncommercial Educational FM and TV Broadcast Station Licenses*, Notice of Inquiry, FCC 77-382, 43 Fed. Reg. 30842 30844 (1978) (processing guidelines for institutional and organizational applicants for noncommercial educational licenses).

¹⁸ See, e.g., *Music Ministries, Inc.*, Hearing Designation Order, 9 FCC Rcd 3628 (MMB 1994).

¹⁹ *In the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, Further Notice of Proposed Rulemaking, 13 FCC Rcd 21167, 21169 (1998).

²⁰ *Lower Cape Communications, Inc.*, Memorandum Opinion and Order, FCC 80-453, 47 RR 2d 1577, 1579 (1980). See also *Florence Bridges*, Memorandum Opinion and Order, FCC 78-719, 44 RR 2d 667, 668 (1978).

²¹ *Way of the Cross of Utah, Inc.*, Memorandum Opinion and Order, 101 FCC 2d 1368 (1985) ("*Way of the Cross*").

noncommercial television authorizations,²² it stated that “noncommercial, educational organizations, even though religiously oriented, can qualify upon an appropriate showing for licenses on reserved channels.”²³ Moreover, the Commission specifically held that “[the Bureau's conclusion that] [o]ver the years, the Commission has articulated the principle that organizations which are primarily religious in nature, even though they have some educational aspects, will not be allowed to operate on channels reserved for educational use . . . was clearly in error.”²⁴

We have examined the Application exhibit, as amended on January 28, 2008, in which Hazen describes how its proposed station will be used to advance educational purposes.²⁵ We find that Hazen has demonstrated that it is a nonprofit educational organization, with distinct educational objectives, and that it will use its station’s programming to further those objectives. Accordingly, on this issue, we find that Hazen is eligible under Section 73.503 of the Rules to hold an NCE authorization.

Next, MUC argues that Hazen “does not presently have the proper authority under Ohio law to operate a radio broadcast station.”²⁶ MUC states that under Ohio law, an entity’s Articles of Incorporation must state the purpose or purposes for which the corporation is formed.²⁷ Specifically, MUC contends that Hazen’s Articles of Incorporation make “no mention of operating a broadcast station business or handling the modest variety of business matters associated with building and operating a broadcast station, such as site acquisition and leasing, and hiring employees.”²⁸

²² Specifically, the Commission rejected the application, concluding that the applicant's board of directors was not sufficiently representative of the community of license and that the applicant had failed to provide a program schedule to allow the Commission to determine that the station would be used to serve the educational needs of the community as required by the Rules. *Way of the Cross*, 101 FCC 2d at 1374-1377.

²³ *Id.* at 1374.

²⁴ *Id.* at 1374, n. 8.

²⁵ Hazen attaches to its Opposition a copy of an amendment to its original Articles of Incorporation filed with the Ohio Secretary of State's office. The amendment indicates that Hazen is constituted “for the purpose of promoting education, religion, morality, and the fine arts; of furnishing instruction and training in languages, literature, mathematics, philosophy, science, religion, art, physical culture, agriculture, and mechanical arts to students” Opposition, Exhibit 1. Additionally, amended Exhibit 2 of the Application indicates that Hazen’s proposed NCE station plans:

(1) To provide educational and religious instruction, including analysis of the Old and New Testament;

(2) To train and ordain others to engage in this purpose; and

(3) To provide facilities and resources for this purpose.

. . . [i]n addition to the specific examples articulated above, Hazen Ministries will ascertain and develop additional educational programming for the residents of Carrollton, Ohio Hazen Ministries will also allow other local organizations and members of the community to create programming that is responsive to the needs of the community.

Application at amended Exhibit 2, Attachment 2.

²⁶ Objection at 3.

²⁷ See Ohio Revised Code, Section 1702.04(3).

²⁸ Objection at 3.

Regarding MUC's claim of Hazen's purported violation of the Ohio Revised Code, the Commission has generally declined to consider issues of a licensee's compliance with the requirements of state corporate law where, as here, no challenge has been made before a state court.²⁹ Accordingly, we find that further consideration of this allegation is unwarranted.³⁰

Conclusion/Actions. Based on the record before us, we conclude that Hazen is qualified to hold an NCE FM authorization. The terms of the grant will be made part of the authorization issued to this applicant. We conclude that grant of the Application would serve the public interest, convenience and necessity.

Accordingly, IT IS ORDERED that the Petition to Deny filed by Mount Union College against the application of Denny and Marge Hazen Ministries, Inc., treated as an informal objection, IS DENIED.

IT IS FURTHER ORDERED, that the application of Denny and Marge Hazen Ministries, Inc. (File No. BNPED-20071019AAM) IS GRANTED.

Sincerely,

Peter H. Doyle
Chief, Audio Division
Media Bureau

cc: Mount Union College

²⁹ See *Fatima Response, Inc.*, Memorandum Opinion and Order, 14 FCC Rcd 18543, 18544 (1999).

³⁰ See, e.g., *Martin Hensley*, Letter, 22 FCC Rcd 8368, 8370 (2007).